

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-357-W/S - ORDER NO. 2005-219
APRIL 28, 2005

IN RE:	Application of Carolina Water Service, Inc.)	ORDER GRANTING
	for Adjustment of Rates and Charges and)	MOTION OF CAROLINA
	Modification of Certain Terms and)	WATER SERVICE, INC.
	Conditions for the Provision of Water and)	
	Sewer Service.)	

This matter comes before me in my capacity as a hearing officer appointed by Order of the Public Service Commission of South Carolina (“the Commission”) on April 26, 2005, to dispose of procedural and evidentiary matters pursuant to S.C. Code Ann. § 58-3-40.

The Applicant, Carolina Water Systems, Inc. (“CWS”) has moved to prohibit introduction of the prefiled testimony of the Intervenor Department of Health and Environmental Control’s (“DHEC”) witness Jeffrey P. deBessonnet on the grounds that the testimony was not timely filed, and that the testimony should be excluded because it pertains to matters that are beyond the scope of the proceedings. DHEC opposes the motion. Neither the Office of Regulatory Staff, nor the Intervenor, Midlands Utilities, Inc., has taken a position on CWS’s motion. The applicant’s motion is granted for the reasons set forth herein.

Under the Commission’s scheduling order, Mr. deBessonnet’s prefiled testimony should have been served by mail on April 20, 2005, but postmarks reveal that it was not

actually mailed until April 21, 2005. The prefiled testimony was received by the Commission on April 21, 2005, but was not received by counsel for CWS until the next day. DHEC admits that it filed testimony after the established deadline, but asserts that it unintentionally missed the deadline because of a mix up in the agency's mailroom, and that missing the deadline did not prejudice the other parties to the case. DHEC also contends that Mr. deBessonnet's testimony pertains to matters within the scope of these proceedings.

The imposition of sanctions is a matter within the sound discretion of the court or tribunal. Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 489 S.E.2d 679 (Ct. App. 1997). Under the present circumstances, DHEC should not be prohibited from introducing Mr. deBessonnet's testimony because it was postmarked one day late. Counsel for DHEC's explanation that her failure to timely serve Mr. deBessonnet's prefiled testimony was completely unintentional is credible and is accepted. There is no bad faith or willful disregard of the Commission's orders and procedures in this case. Furthermore, CWS's motion for a one day extension to file conditional rebuttal testimony is granted in order to remedy prejudice caused to CWS by the delay in filing.

However, Mr. deBessonnet's testimony cannot be admitted into the record of evidence in the case because its subject matter is not relevant to these proceedings. The substance of Mr. deBessonnet's testimony is entirely directed to the effect of language in CWS' tariff pertaining to how the customers will be charged for costs incurred if their system is connected to a regional sewer system. Therefore, Mr. deBessonnet's testimony goes to the same issue which DHEC unsuccessfully sought to introduce to this Docket by

way of its Motion to Expand the Scope of the proceeding, which was earlier denied by the Commission in this case. Order No. 2005-113, of March 21, 2005.

DHEC argues that CWS's application entails the clause challenged in deBessonnet's testimony because "The Applicant has proposed to modify the language in the Tariff addressing the interconnection rates, although the rate structure itself has not changed; therefore, that section is capable of being addressed in this hearing." *Intervenor's Response to Motion for Order Prohibiting Introduction or Admission of Testimony*, p. 3. This is not the case. Nothing in CWS's application asks the Commission to alter that particular provision in its tariff, and neither the utility, nor the affected public, has been given notice that the Commission intends to review this provision. Therefore, the language is not at issue, and cannot be made an issue, in the present case.¹

Because DHEC's prefiled testimony is beyond the scope of the proceedings as already defined by Commission's order, it is subject to exclusion on the basis of that order. Furthermore, CWS would be prejudiced if the Commission were to allow the introduction of this evidence, because it would be forced to respond to evidence which the Commission has already indicated would not be at issue in the case.

DHEC has asked that it be allowed to make an offer of proof if CWS's motion is granted. The Commission's regulations allow a party to make an offer of proof when the Commission prohibits it from introducing evidence. 26 S.C. Code Regs. 103-873B

¹ DHEC obviously believes this issue is important and worthy of the Commission's attention. It may wish to consider raising its concerns with the Commission by way of a generic proceeding or through other appropriate means.

(“When the presentation of any evidence is objected to and such objection is sustained by the presiding officer, the proponent of the evidence may request that she or he be allowed to present an offer of proof for the formal record.”) This provision is applicable to this situation, and DHEC will be allowed to make an offer of proof to the Commission.

IT IS THEREFORE ORDERED THAT:

1. CWS’s motion to prohibit the introduction of the prefiled testimony of Jeffrey deBessonnet is granted.
2. DHEC shall be permitted to make an offer of proof regarding Mr. deBessonnet’s testimony pursuant to 26 S.C. Code Regs. 103-873B.

IT IS SO ORDERED

/s/
Charles L.A. Terreni
Hearing Officer